

REMARKS

Reconsideration and allowance of this application are respectfully requested in view of the foregoing amendments and the following remarks.

Regarding the Examiner's request for copies of the references crossed out on the Information Disclosure Statement, Applicant directs attention to the parent application S.N. 09/215,424 (now Patent No. US 6/314,501) and S.N. 09/120,791, filed 7/23/98 where such copies should be found. Note 37 CFR 1.98(d).

Claims 1-64 have been canceled in favor of new claims 65-100. Claims 65, 75 and 85 are the only independent claims. Applicant believes that these new claims overcome the 35 U.S.C.112 objections and rejections set forth on pages 2-4 of the Action.

Applicant respectfully submits that new claims 65-100, which are more specific than the original claims 1-64, are allowable over any combination of the Reid et al, Dean and/or Rimmer et al patents relied on by the Examiner.

Initially, the applicable law regarding 35 USC 102(b) and 103(a) rejections will be briefly reviewed.

It is well established that "A claim is anticipated under 35 U.S.C. 102 only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." Verdegaal Bros. V. Union Oil Co. of California, 814 F2d 628, 631 2 USPQ2d1051, 1053 (Fed. Cir. 1987) (see also MPEP 2131).

Additionally, with regard to inherency, it was held in the recent CAFC decision, Trintec Industries, Inc. v. Top-U.S.A. Corp. (CAFC 7/2/02) that "Inherent anticipation requires that the missing descriptive material is 'necessarily present,' not merely probably or possibly present, in the prior art." In re Robertson, 169, F. 3d 743, 745, 49 USPQ2d 1949, 1950-51 (Fed. Cir. 1999).

Still further, the fact that a certain result or characteristic may occur or be present in the prior art is not sufficient to establish the inherency of that result or characteristic. In re Rijckaert, 9F. 3d, 1531, 1534, 28 USPQ2d 1955, 1957 (Fed. Cir 1993). “In relying upon the theory of inherency, the examiner must provide a basis in fact and/or technical reasoning to reasonably support the determination that the allegedly inherent characteristic necessarily flows from the teachings of the applied prior art. Ex parte Levy, 17 USPQ2d 1461, 1464 (Bd. Pat. Ap. & Inter. 1990) (emphasis in original). (Also see MPEP 2112).

It is also well established that, for an obviousness rejection under 35 U.S.C. 103(a), the Examiner has the burden of making a prima facie case of obviousness by the presentation of adequate evidence (e.g. see In re Thrift, 63 USPQ2d2002 (CAFC 9/9/02). As is also well recognized, where a combination of prior art references are combined, the prior art must provide a suggestion or motivation for making such combination without using hindsight provided by applicant’s invention. (e.g. see Crown Operations Int’l v. Solutia, 62 USPQ2d1917 (CAFC 5/13/02).

With regard to the evidence required to provide a prima facie showing of obviousness, not In re Lee, 61 USPQ2d1430 (CAFC 1/18/02) which holds that an obviousness determination may not substitute the common knowledge of one skilled in the art for the required specific evidentiary support required for a 35 U.S.C. 103 rejection. (Also see MPEP 2144.03).

Independent claims 65, 75 and 85 will initially be considered. Note that these independent claims require that the partitions be separate and independent, and that “at least first and second ones of said partitions each operating under the control of a separate operating system, wherein communications between said first and second partitions is accomplished using standard network applications without the need for providing an external network connection there between...”

The novelty and importance of the above limitations will be understood by reference to the BACKGROUND and SUMMARY OF THE INVENTION portions of the specification.

In the Office action, the Examiner employs the Reed et al. Patent as the basic reference. A review of Reed et al reveals that it does not disclose or teach separate and independent partitions each operating under the control of a separate operating system. Rather, it appears that Reed et al. Merely discloses and teaches use of partitions operating under a single UNIX operating system. For example, Reed et al., in the ABSTRACT, in column 4 lines 44-51 and also in claim 1, discloses use of only a single operating system. Additionally, Reed et al. Does not disclose or teach the "network connection" recitations in the claims.

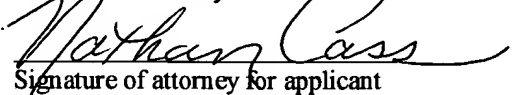
Regarding the Dean patent, similar to Reed et al., Dean discloses and teaches use of only a single operating system as evidenced by Dean's Fig. 3. Also, like Reed et al., Dean does not provide a network connection. Accordingly it is respectfully submitted that independent claims 65, 75 and 85 are allowable over Reed et al in view of Dean. Dependent claims 66-74, 76-84 and 86-99 are therefore also allowable. The teachings of Rimmer and Elgamal et al., even if applicable (which most are not) would not overcome the deficiencies of the Reed et al./Dean pointed out above.

Accordingly, in view of all of the foregoing, it is respectfully requested that claims 65-100 be allowed and the case passed to issue.

Reg. No. 18,931

Tel: (310) 284-9631
Fax: (310) 284-9634

Respectfully Submitted,
Bruce Allan Vessey


Signature of attorney for applicant

NATHAN CASS
Type or print name of attorney